

Total Time Allotted: 3 Hours

Total Marks : 250

**Question Paper Specific Instructions**

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

**NOTE:** Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

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Teacher's Remark

*good but heading is same is  
require & content improvement  
is for is also require*

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Section - A

Q.1(a). Constitutionalism is the antithesis of arbitrary powers Elucidate (10 Marks, 150 words)

The concept of Constitutionalism as developed by Prof. Charles Williams propounds that constitutionalism is rule of constitutions and its spirit is against despotism, which is rule of arbitrariness, whims & caprices.

Features of Constitutionalism

- (1) Limited Government
- (2) Avoidance of Absolutism
- (3) Rule of law
- (4) Protection of Fundamental Rights.
- (5) Independent & Strengthened Judiciary.

~~Constitutionalism is Antithesis of Arbitrary~~  
to Powers

↳ The rule of constitutionalism abhors

## Absolutism (Maru Ram v/s UOI)

↳ The exercise of powers has to be inherently limited and guided by the philosophy and principles of constitution (AC Poudyal case)

↳ Constitutionalism is against unreasonable, illegitimate, malafide and illegal exercise of powers (M Nagraj case)

↳ Constitutionalism protects <sup>against</sup> excessive violations of liberty, equality and Justice. (Rameshwar Prasad case)

Thus constitutionalism needs to be ensured in letter and spirit to achieve the goal and objectives of socialist, secular, democratic, republic India.



Q.1(b). Rule of Law has no fixed or articulate connotation though the Indian courts refer to this phrase time and again. Comment in light of Judicial Decisions (10 Marks, 150 words)

Rule of law refers to supremacy of law and prevalence of legal spirit in the governance of the country. "Be you so ever high, the law will be above you" - Lord Denning.

No fixed or articulate connotation

↳ Rule of law has been propounded as the Basic feature of the Indian constitution in Keshavanand Bharati case

↳ Rule of law is understood to be absence of special privileges and non-arbitrariness in decision making as held in

SR Bommai vs UOI

↳ Rule of law also vitiates the violation of sacred fundamental rights and instills the concept of state as protector of rights. [Justice Khanna in minority opinion of ADM Jabalpur v/s Shukla]

↳ Rule of law ensure equality before law and equal protection of laws (Art-14) (Minerva Mills v/s UOI)

↳ In Javed v Haryana, the disqualification on the basis of two children was held to be valid on the basis of law being legitimate & seeking to achieve sustainable development (Art-51A)

Thus Rule of law forms a central & Basic tenet of Indian constitution.



Q.1(c). Discuss the utility of Preamble in the Indian Constitution. (10 Marks, 150 words)

The Preamble of Indian constitution has been referred to as the key to the minds of constitution makers and an identity card of the Indian constitution. (Nani Palkhivala)

### Utility of Preamble

(1) Deliberates the goals, objectives and aspirations that the constitution seeks to achieve -

↳ Goals of socialism (Samantha v/s St. of AP)  
Secularism (SR Bommai v/s UOI).

Democratic (Indira Gandhi v/s Raj Narain) and Republic.

↳ Objectives of Justice, liberty, Equality and fraternity in its many manifestations.

- (2) Identifies the source of power "We the people"
- (3) Date of enactment of the constitution.
- (4) Nature of Polity of the Indian union.
- (5) Aid & Interpretation of the constitution.

↳ In DS Nakara v/s UOI, aid was sought from preamble to declare Indian constitution propounding communitarian socialism and not marxist socialism.

↳ In Shirur Mutt case & Ismail Farooqui case aid was taken from preamble to declare that only essential religious practices were protected against A. 14.

- (6) Concept of Welfare state deliberated

Thus Preamble is foundational constitutional document and shall guide policy makers & Judges in the same manner as objective resolution of our constitutional fathers.



→ Pre  
→ Arts  
→ ~~Arts~~ Positive

Q.1(d). Article 14 provides positive and not negative equality. Explain (10 Marks, 150 words)

Art. 14 of the Indian constitution provides for Equality before law and equal protection of laws. It ensures rule of law and non-arbitrariness in governance.

### Positive Equality under Art. 14

- ↳ Equal protection of laws (American concept) propounds treating the equals equally and unequals unequally. i.e. paving the way for positive affirmations.
- ↳ In Indra Sawhney case reservation for OBC (except creamy layer and 50% ceiling limit) was affirmed as part of constitutional commitment of positive equality.
- ↳ Similarly in Janhit Abhiyan, EWS reservation was upheld by SC.

### Negative equality under A.14

↳ Concept of Equality before law propounded by AV Dicey mandates

- Rule of law
- No Discrimination
- Treating each Person equally

↳ In FL Balsara, it was held that there could be no class legislation however based on Intelligible differentia and Reasonable nexus exceptions can be carved.

↳ Further, SC in EP Royappa expanded the mandate of A.14 and held non-arbitrariness as a central tenet of Right to Equality

Thus, Equality in its varied manifestations demands adherence to rule of law, non-malafide & non-arbitrary exercise of powers and coherent construction with the Golden Triangle of A.14, A.19, A.21.



Q.1(e). PIL is a tool for strengthening democracy. Elucidate (10 Marks, 150 words)

Public Interest Litigation refers to a petition or suit brought by public spirited individual in the interest of greater public, national concern. It is covered under Epistolary Jurisdiction of HC & SC. (SP Mittal v/s VOI)

Features  
of PIL

Exception to principle of locus standi

Public / National Interest

Violation of Fundamental rights of citizens.

Tool for strengthening Democracy

(i) Promotes access to Justice for weak and marginalised sections.

[Women's right to enter Sabarimala temple during menstruation upheld - Indian Young Lawyers Association case]

Danesh → 140/L → 20 → P/P Rule



(2) Exposes violation of fundamental rights.  
[Mc Menta v/s UOI - Right to clean and healthy environment]

(3) Ensures adherence of executive and legislature to constitutional principles.

[ADR v/s UOI] - Electoral Bonds were held as unconstitutional and publication of criminal antecedents of legislators.

(4) Widens the scope of Fundamental rights.

[RIEX v/s UOI] - Right to Information under Art. 19]

[Mc Ranjit Singh v/s UOI - Right against adverse effects of climate change]

(5) Strengthens check & Balances and Separation of Powers (Montesquie)

Thus PIL propounds an alternative medium to

ensure rule of law & adherence to constitutional obligations



Q.2(a) Secularism as the basic feature of the Indian Constitution. What was implicit in the Constitution until then became explicit after the 42nd Amendment. (20 marks)

Secularism in the Indian constitution refers to rendering equal opportunities to individuals and religious denominations to access the freedom to religion and develop spiritual wellbeing to their best interests.

### Constitutional Provisions for Secularism as Basic feature

Art. 25 - Freedom of conscience and to practice, profess and propagate religion of one's choice

Art-26 - Empowers Religious denominations to spread religious teachings and discourse.

Art-27 - Freedom from taxation for religious denominations

Art-28 - Freedom from mandatory religious instruction.

Preamble - Values & Goals of 'secularism'  
to be achieved.

Art. 51A - Fundamental duty to respect  
other religions and develop  
unity & fraternity.

In the case of SR Bommai v/s UOI, Secularism

was held to be part of Basic structure and  
regarded as a key objective and philosophy  
of the Indian constitution.

Implicit in the constitution

↳ The philosophy of secularism was implicit  
in the constitution as depicted by

Part III (Art. 25-28), DPSP and fundam  
ental duties (Art. 51A) and the insertion  
of the word 'secularism' in Preamble by



42<sup>nd</sup> CAA, 1978 only made explicit what was already implicit.

↳ It also rendered Art. 25-28 subject to reasonable restrictions of Public order, morality, health and other Fundamental rights in Part III

↳ Secularism was also rendered subject to Essential Practices Test by way of Shirur Mutt case

• Further in Hanif Qureshi and Mirzapur Mohi Masjid case it was held that

slaughtering of Animals was not an essential practice under A-25.

• Reliance was placed on Essentiality Test in M Ismail Farooqui where it was

held that praying in a Mosque is not an essential religious practice in Islam.

↳ The evolving contours of Secularism were again widened in Indian Young Lawyers Association case where women

were allowed to enter Sabrimala Temple in view of A-14 and A-19 along with A-21.

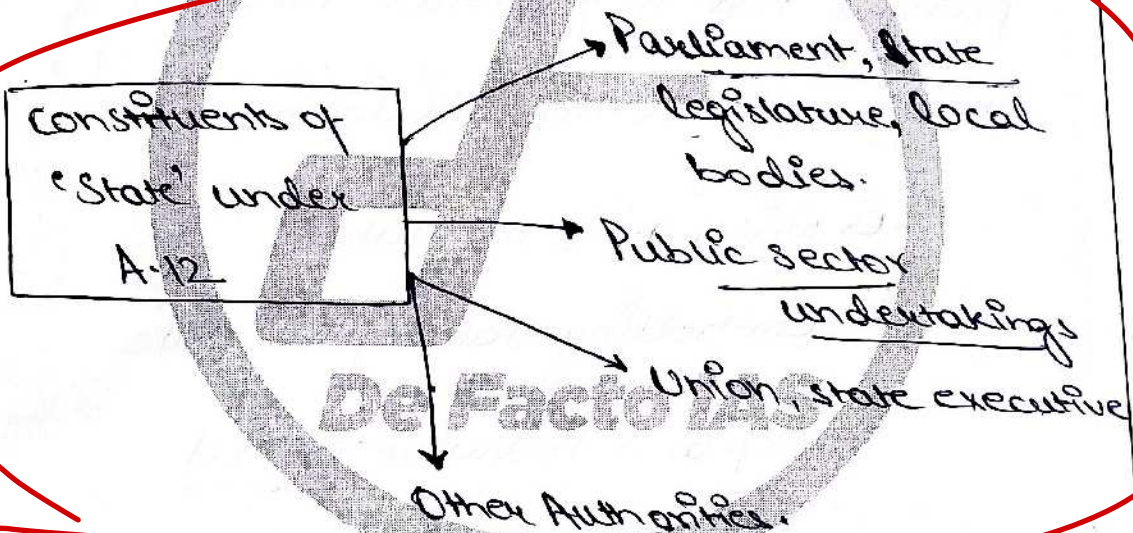
↳ In Bijoy Emmanuel exception in the interest of religion was made where non-singing of national anthem was allowed as long as respect was observed. *gru hahis*

⑪ , Thus, in the recent Hijab Judgement Justice Dhulia has reaffirmed the principle & philosophy of Secularism albeit with reasonable restrictions, as the basic feature & implicit in the constitution.



Q.2(b). How has the Judiciary evolved the definition of 'State' under article 12 of the Indian Constitution? (15 marks)

Article 12 of the Indian constitution provides for the definition of 'State' for the purposes of enforcement of fundamental rights under Part III and DPSP (Art-36)



### Evolution of Definition of State

(1) Widening of term 'Other Authorities' to include all 'instrumentalities of state' as discussed in RD Shetty v/s AAI

(2) In Pradeep Kumar Biswas and PK Jain  
SC held all constitutional and statutory  
bodies to be included under definition  
of state. [Art-12]

(3) In Ajay Hasia v/s Khalid Mujib a three'  
pronged test to formulate meaning of  
other authorities was laid down -

- ↳ Monopoly of the state
- ↳ Controlling stake of the state
- ↳ Deep and Pervasive control

(4) Relying on the test in Ajay Hasia, CSIR  
was not rendered as state in ICB case

(5) In Zee Telefilms it was held that BCCI  
does not meet the characteristics of state



(6) In Subash Chandra case, Judicial functions of Judiciary were held to be not part of state however administrative functions (Transfer of Judges, constitution of Benches etc.) were part of state functions.

(7) In Narvesh Kumar NCERT was also held not to be a state instrumentality.

Issues with evolution of A-12 state definition

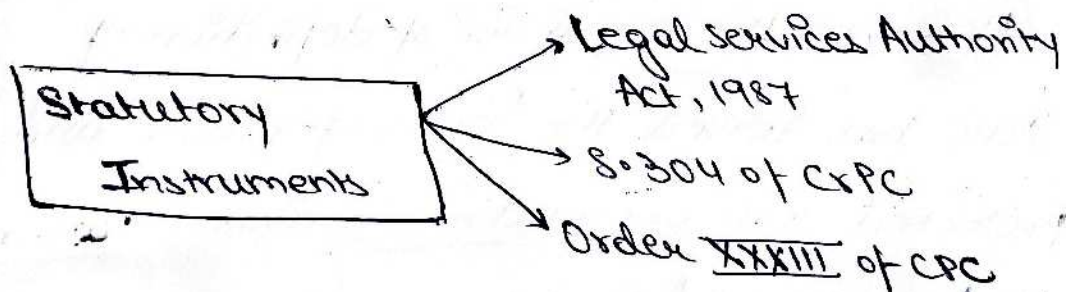
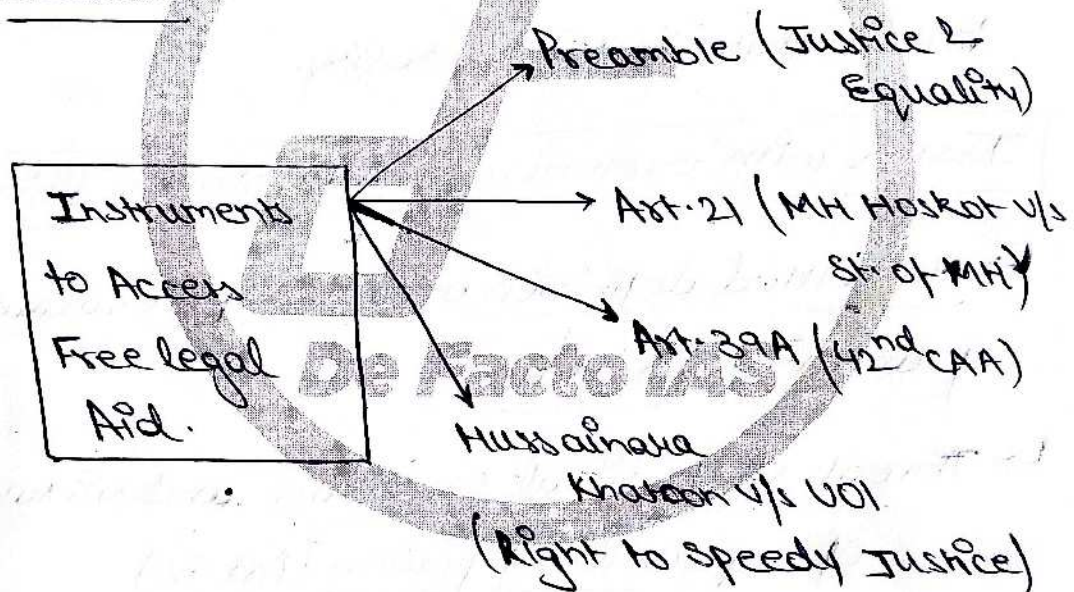
↳ No settled definition and test for evaluation of an entity as state

↳ Threat of Judicial overreach and violation of separation of power (Art. 50)

However, the expansion of definition of State has served the 'ends of justice' and protected state encroachments against sacrosanct fundamental rights.

Q.2(c). Discuss major features of the Legal Service Authority act. How far it has been effective? (15 marks)

Legal Services Authorities Act, 1987 is a Premier legislation enabling Right to free legal aid and Right to access Justice for underprivileged, deprived and marginalised sections.





## Features of Legal Services Authorities Act

- (1) Universal access to legal aid → statements and objects clause
- (2) Enables access to legal aid for certain categories of persons u/s 12.
  - Disaster victims
  - Women, SC, ST
  - Trafficking victims
  - Transgenders
  - Income criteria. (< 1 lakh in certain states)
  - Senior citizens.
- (3) Establishment of hierarchy of organisation to maintain accountability and effective implementation. (NALSA, SLSA, DLSA etc.)
- (4) Provides for organisation of Lok Adalats.
- (5) Mandatory establishment of legal aid clinics & pool of PLVs in law universities.

PLA



(6) Enrollment of lawyers in litigation pool and pro bono service providers.

### Effectiveness of Legal Services Act

- (1) Active litigation opportunity without compromising on constitutional rights
- (2) Access to justice for all (A.39A)
- (3) Helped in generating awareness about rights.
- (4) Swift resolution of disputes through Lok Adalats and Gram Nyayalaya [SC organised Lok Adalat week]
- (5) Empowerment of marginalised sections.

### Challenges that remain

- (1) Poor quality of legal assistance.
  - (2) Inadequate payment to legal professionals and resultant depletion of pool.
  - (3) Funding constraints in organising legal aid camps.
  - (4) Lack of universalisation of coverage of S.123
- Thus legal aid services Act has served its mandate however challenges remain demanding swift



Q.4(a). What is Meaning and scope of 'Power to do Complete justice' under article 142(1) of the Constitution. (20 marks)

Supreme Court of India has been endowed with extraordinary power to do complete justice under Art. 142(1) going beyond the scope of legal provisions and laid down policies.

Meaning of 'Power to do complete Justice'

Constituent Assembly Members HV Kamath & Dr. Ambedkar reasoned the existence of such power in order to fulfill the mandate of SC as the protector and guardian of Fundamental Rights and the final interpreter of the constitutional rights.

The power is to be used sparingly and must not encroach the sacred domains of power of different organs of the state.

The broad contours for the exercise of power under Art. 142(1) includes -

- ↳ Absence of legislation/policy on a particular subject matter.
- ↳ legislative vacuum in the subject matter leaving grey areas.
- ↳ Matters of grave/urgent public importance
- ↳ Deficiency in legislation/policy demanding urgent correction
- ↳ Grave injustice meted out
- ↳ Malafide, unreasonable, illegal exercise of powers.

### Scope of Article 142(1)

→ Mandate to fill legislative vacuum -



In case of Bhanwari Devi v/s St. of Raj.  
SC exercising powers under Art. 12(1)  
laid down Vishakha Guidelines in order  
to prevent sexual harassment of woman  
at workplace.

→ Providing space for equal realization of  
rights - SC in Vineet Kumar Sharma  
gave co-pecenary rights to daughters  
in father's property paving the way  
for gender justice.

• SC in Secretary of Defence v/s Babita  
Puriya gave permanent and  
short service commission for women  
in Armed forces.

→ Expansion of Right to life - SC in  
KS Puttaswamy v/s UOI affirmed the



## Right to Privacy of an Individual

- SC in Ashok Kumar Thakur also upheld the constitutional validity of 93<sup>rd</sup> CAA which inserted Art. 15(5) in order of societal benefit.
- SC in MC Mehta v/s UOI (Tag Trapezium case) gave the principle of sustainable and ecological friendly living.
- SC in multiple Judgements exercising A. 142(1) gave relief to parties in Divorce and adoption and maintenance suits ensuring efficacy of Justice delivery process.

Thus, the power u/A 142(1) is an unparalleled power and need to be used progressively for realising of constitutional rights.



Q.4(b). Examine the scope of parliamentary privileges in light of the recent decision of Sita Soren V. UOI delivered by the Supreme Court. (15 marks)

Recently the Supreme Court of India with a trumping majority overruled its previous decision in Sita Soren v/s UOI | PV Narasimha Rao v/s UOI and paved the way for corruption free and integrity ensured law making process.

### Scope of Parliamentary Privileges

A-105 of the constitution gives broad powers to anyone speaking on the floor of the house (MPs + Attorney General + unelected ministers) from any prosecution for the words spoken or actions depicted.

The rationale behind giving such broad powers was deliberated in constituent assembly where it was held that



MPs need to be bestowed with such power in order to enable them to speak without the fear of prosecution and effectively represent the interest of their constituencies.

The absence of such power, it was held will have a "chilling effect" on MPs.

However, the broad contours of Parliamentary privileges were made subject to -

→ Art. 121 (Parliament cannot discuss the conduct of Judges in the House)

→ Art. 118 (Rules laid down by the Parliament in its own wisdom)

→ F.R. vs U.S.  
→ Raja Ram Pal case called for balancing fundamental rights of citizens with the Parliamentary privileges.



Sita Soren v/s UOI

→ SC clarified the anomaly caused by PV Narsimha case which had held that Bribe taking MPs and voting against the consideration of Bribe shall not be prosecuted due to the overarching protection conferred by A-105.

→ In PV Narsimha, it was also held that those MPs who had taken bribe but not voted in the parliament shall not be protected due to the use of term 'in connection of' in Art-105.

Thus, the ever expanding scope of A-105 needs to be contained and a law on the subject should be made in order to bring certainty and strengthen specific parliamentary privileges by statute.

Q.4(c). Discuss meaning and scope of 'Office of profit' under Article 102 of the Constitution of India. (15 marks)

Article 102 of the constitution lays down disqualifications for the members of Parliament (MPs) including Office of profit, citizenship etc. The constitution endows the President with the authority to decide on the disqualification in consultation with Election Commission of India.

### Meaning of Office of Profit

There is no definition of Office of profit given under the constitution however Judicial decisions have rendered broad guidelines for deciding. These include.

↳ Remuneration earned from the office.



- ↳ Office under union or state govt.
- ↳ Exercise of control to the post appointed
- ↳ Duration & tenure of the post
- ↳ Nature & character of the post.

### Scope of Office of Profit

→ In Jaya Bachan case, SC held that Office of profit does not mean physically accessing an office and being on a payroll rather a nexus or a connection is enough for disqualification.

→ SC has also exempted offices of Ministers of union and state govt. from the definition of Office of profit.

→ In recent cases of Delhi & Jharkhand CM SC has reiterated the need to interpret

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the provision broadly and not narrowly.  
There should be a holistic application of  
the provision eliminating political goals to  
be achieved.

### Challenges with Meaning & Scope

- Ambiguity in definition perpetuates  
selective and politically motivated  
application of Office of Profit.
- No codification of Definition
- Evolving nature of technology, need to  
widen the scope to serve ends of  
spirit of disqualification.

Thus 'office of profit' remains a  
significant flashpoint in political discourse  
and need to be rationalised in order to foster  
better debate, discussion & deliberation.



Section - B

Q.5(a). Discuss doctrine of eminent domain. Has it lost relevance in India today? (10 Marks, 150 words)

Doctrine of eminent domain refers to the power of govt. to acquire private property in view of more emergent public interest.

The doctrine rests on

Salus Populi  
quasa est

↓  
Public emergent  
cause demands  
greater attention

Privata non  
est quam  
publica.

↓  
Private interest  
can take back  
seat against  
public interest.

The conditions necessary for operation of doctrine include -

↳ National importance

↳ Public Interest

↳ Fair compensation

↳ Due procedure followed.

3607  
60  
huh

In an emergent case, SC held that fair compensation could be afforded after due consultation to exercise the doctrine.

### Relevance in India.

(1) With the advent of LARR Act, there is greater legislative backing to the doctrine and hence no particular invocation is required.

(2) In view of emergence of state properties and Judicial decisions government is empowered to acquire properties.

However, SC recently emphasised on need to preserve the essence of Art 39(b) which mandates accumulation of property for common benefit and hence the doctrine has still not lost its relevance.



Q.5(b). What are the major constitutional provisions ensuring independence of the Supreme Court of India? (10 Marks, 150 words)

Independence of Judiciary is a basic feature of the Indian constitution as held in Keshavanand Bharti and Delhi Judicial Association case. In addition, it is a prominent federal feature of the Indian constitution.

Major constitutional provisions ensuring Independence of SC

- Art. 13 & 32 - Ensuring Judicial review of executive and legislative action enforcing system of checks and Balances.
- Art. 50 - separation of power between Executive and Judiciary.
- Art. 124 - President shall appoint SC

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Judges on the recommendation of SC  
Chief Justice and such other Judges  
(Collegium system)

- Salaries and Pensions of the SC Judges  
being charged on CFI (Art. 125)
- Non-reduction in service pay and  
conditions post appointment (A. 125)
- SC as a court of record and the power  
to punish for own contempt (A. 129 & 137)
- Removal of SC Judges through motions/  
resolutions being passed in both houses  
by special majority.
- SC not bound to give advice on certain  
matters (Art. 143)

Thus, the constitution has sufficiently  
insulated SC from executive interference  
and maintained separation of Powers.



Q.5(c) Supreme Court recognised the right to die with dignity as a fundamental right. Discuss in light of the decided case. (10 Marks, 150 words)

Art-21 of the Indian constitution provides for Right to life and personal liberty which can only be taken away in accordance with procedure established by law.

SC in Maneka Gandhi v/s UOI had widened the scope to read fair and due procedure as part of A-21.

Right to Die with Dignity

↳ SC had earlier mandated that Right to die is not part of A-21. However, in

Aruna Shaunbaug case, SC recognised

Passive euthanasia administered death as a central tenet to right to die with dignity under A-21.

right to death

↳ Earlier SC also overturned the Raj. HC Judgement in the case of Santhara Santekhna practice followed by Jains and allowed death by consent to vegetative State.

### Significance of the Judgement

- ↳ Ensures dignified death (Covid 19 Mass Burials)
- ↳ Alleviates pain and suffering
- ↳ Ensures religious cremations in accordance with faith of individual.
- ↳ Upholds welfare state principle
- ↳ Values death equivalent to death.

Thus, Right to live with dignity along with death with dignity ensured that malpractices that occurred during COVID-19 are not repeated and constitutional ideal of dignity is achieved.



Q.5(d). Local governance in India needs to be constitutionally revitalised. Suggest measures for the same. (10 Marks, 150 words)

Art. 40 of the Indian constitution envisages the system of local self government which was included through 73<sup>rd</sup> & 74<sup>th</sup> constitutional Amendment Act 1992.

Constitutional Provisions for local self govt.

Art. 243 - Art. 243O - Panchayat Raj  
for rural areas

Art. 243P - Art. 243ZG - Municipal bodies  
for urban Areas.

Need for constitutional revitalisation

↳ Lack of devolution of subjects  
involving administrative control  
[Only 29 subjects for PRIs and 18 for ULBs]

→ Improper, Inadequate and Irregular  
fund devolution due to non-  
composition of State finance commission  
(Art-243F)

→ Executive interference in State Election  
Commission (Art-243K)

→ States not extending Local Self-govt  
to scheduled Areas through PESA rules.

→ Emergence of 'Panchayat Pati' concept  
violating women reservation (Art-243D)

### Measures to Revitalise

→ Constitutional safeguard to no. of subjects  
devolved (compulsory devolution)

→ Regular fund devolution through constitution  
of State finance commission.

→ Capacity building and Infrastructure  
creation.

→ Compulsory subjects and OBC reservation  
to be mandatory.



Q.5(e). What are the major provisions under the constitution governing legislative power division between union and state? (10 Marks, 150 words)

The Indian constitutional scheme is based on division of legislative powers between union and states known as federalism.

Federalism has been rendered the status of Basic structure via Sh Bommai v/s

UOI

Constitutional Provisions governing division of legislative power

→ Art. 246 of the Indian constitution along with 7<sup>th</sup> schedule provides for 3 lists guiding law making -

↳ Union list (List I)

↳ State list (List II)

↳ Concurrent list (List III)

Doctrine of occupied field mandates law making within the realm of respective lists.

→ Art. 249 - Residuary powers are left with the Parliament for law making.

→ Art. 251 - Doctrine of repugnancy mandates that union law shall prevail over state law in normal circumstances.

→ Art. 252 - Mandates Parliament to frame law on any state subject if two or more states request for such law.

→ Art. 253 - Mandates Parliament to frame laws for implementing Int'l treaties.

→ Art. 200 - Empowers the Governor to reserve the bill of state for President if it encroaches upon federal subject.

Thus, the SC has used Doctrine of Harmonious Construction & Pith and substance to resolve legislative differences.



Q.8(a). The Council of Ministers shall be collectively responsible to the Lok Sabha. Explain  
(20 marks)

Indian constitution has adopted the British Westminster cabinet form of government having a Prime Minister heading Council of Ministers (De facto head) advising President (De Jure head) in whose name all executive decisions are taken. (Art-53)

### Constitutional Position of Council of Ministers

- Art-74 - There shall be a council of Ministers headed by PM to aid and advise the President.
- Art 75 → President shall appoint a PM on whose advice President shall appoint council of ministers.
- Council of Ministers shall be collectively responsible to the Lok Sabha in particular.

## Collective Responsibility to Lok Sabha

- Council of Ministers sink and swim together holding the mandate to comply with the cabinet / council decisions.
- Council of Ministers are required to defend the decisions of the council in the Lok Sabha as well as public and act as a united team.
- Council of Ministers shall answer the questions put on the floor of the house collectively and individually aligning with the govt. policies and principles.
- PM can advise removal of a minister from the council if he/she fails to uphold collective responsibility.

*Cont. context*



## Exercise of control over council of Ministers by Lok Sabha

↳ Lok Sabha can pass No-confidence  
motion against the entire council of  
ministers without attributing any  
reason and bring about a fall in  
the govt.

↳ Lok Sabha can also pass adjournment  
motions.

↳ Question hour lends opportunity to question  
specific govt. policies/decisions.

↳ Parliamentary committees exercising domain  
specific control over expenditures and  
legislations brought by govt.

↳ Demand for grants and Money bill laid  
on the floor of the House.

→ Reduce Govt. ~~but~~  
→ make it ~~substantive~~

### Challenges of collective Responsibility

- ↳ Promotes uniformity and impedes innovation in decision making
- ↳ Centralisation of powers in select few individuals.
- ↳ Curbs dissent, an essential element of democracy
- ↳ In India there is no legal responsibility of ministers, as observed in Britain.

However, despite the challenges collective responsibility of council of ministers to the loksabha has ensured stable governance in the country realising the tenets of 'welfare state' enshrined under the Constitution.

10



**Q.8(b).** A meaningful reform of the 'collegium' system is due for appointment of judges in higher judiciary. Do you agree? Support your argument. (15 marks)

Art-124 of the constitution mandates Appointment of SC Judges by President after consultation with Chief Justice and such other judges as he may deem fit.

### Evolution of Collegium System

→ SC in SP Gupta v/s UOI known as 1<sup>st</sup> Judges case held that consultation is not equivalent to concurrence and the executive is fit to appoint any Judge.

→ SC in SCAORA v/s UOI known as 2<sup>nd</sup> Judges case for the first time evolved the concept of collegium (CJI + 2 senior most Judges) whose concurrence shall be mandatory

→ SC in SCAORA v/s UOI known as 3<sup>rd</sup> Judges

case widened the ambit of collegium system and now included 5 Judges (CJ + 4 senior most Judges) who shall recommend Judges for appointment.

→ SC in NTAC case struck down 99th CAA which proposed a National Judicial Appointments commission as violative of independence of Judiciary, a basic feature of the constitution.

→ Since 2016, SC has been following practice of memorandum of procedure and collegium recommendation as well as executive concurrence for appointment of Judges to HC & SC.

### Need for Reform

↳ Opaque and unaccountable system of



## appointing Judges in Higher Judiciary

- ↳ Breeds favouritism and accusation of corruptions
- ↳ High pendency of cases in Higher Judiciary  
[SC - 60,000+ cases and HC - 20 lakh case, cumulatively - 5.6 cr]
- ↳ High no. of vacancy in HCs  
[20% vacancy as per National Judicial Data grid]
- ↳ Unparalleled system of appointment world over.

*J. Chatterjee*

### Reforms Needed

- Following a just, fair and transparent procedure for appointment.
- Implementing Memorandum of Procedure guidelines strictly and allowing collaborative approach towards appointment.

*8/2*

Thus, the present system needs reform however judicial independence cannot be compromised.

Q.8(c). Discuss provisions relating to disqualification of members of parliament. Is anti defection law against democratic principle? (15 marks)

A-102 of the Indian constitution provides for disqualification for Members of Parliament, which aim to ensure a fair, equitable, legitimate and effective parliamentary democracy in India.

Provisions relating to Disqualification of MPs

→ A-102 provides for disqualification on the basis of -

- ↳ Loss of citizenship
- ↳ Office of profit
- ↳ Failure to declare election accounts and expenditure
- ↳ Non-eligibility
- ↳ Any other law framed by the constitution

102 (1)  
(2)  
103 (4)  
[m]



→ Anti Defection law (10<sup>th</sup> schedule - 52<sup>nd</sup> CAA 1985) provides for disqualification of MPs when they switch parties or indulge in cross voting. Earlier split exception was removed by 91<sup>st</sup> CAA 2003.

→ Disqualification under Representation of People's Act, 1951

↳ Section 8(3) of the ~~constitu~~ Act mandates disqualification for certain offences like booth capturing, Hate speech etc.

↳ Section 8(3) also mandates immediate disqualification on the conviction of an MP for 2 or more years. Lily Thomas v/s

UOI

Significance of Anti-Defection law

(1) Adherence to principle of party unity and homogeneity.

- (2) Promotes stability in government
- (3) Curbs electoral malpractices like Horse trading.
- (4) Promotes development of grassroot leadership and builds cadre of party.
- (5) Focus on issue based politics.

### Anti-defection against democratic principles

- (1) Suppresses dissent and inner party democracy
- (2) Partisan conduct of Speakers has been flagged repeatedly by SC (Nabam Rebia case)
- (3) Undue delay and unreasonable scrutiny by speaker (Keisham Meghichandra Singh case)
- (4) Illegitimate differentiation between Independent and Nominated candidate (Kinnoti Holo Han).

Thus as suggested by NCURC, anti-defection petitions can be bestowed in Independent Tribunal.